

caucusers are caucusing, voters are voting, and countless ballots have been cast already in places as diverse as Council Bluffs, Nashua, and Myrtle Beach. Thousands more Nevadans are making their voices heard today, and Americans in over a dozen more States will have an opportunity to do the same next week.

It is campaign season. We are right in the middle of it, and one of the most important issues now is this: Who will Americans trust to nominate the next Supreme Court justice? The Presidential candidates are already debating the issue on stage. Americans are already discussing the issue among themselves, and voters are already casting ballots—in the case of the Democratic leader's constituents on this very day—with this issue very much in mind.

One might say this is an almost unprecedented moment in the history of our country. It has been more than 80 years since a Supreme Court vacancy arose and was filled in a Presidential election year, and that was when the Senate majority and the President were from the same political party. It has been 80 years.

Since we have divided government today, it means we have to look back almost 130 years to the last time a nominee was confirmed in similar circumstances. That was back when politicians such as mugwumps were debating policy like free silver and a guy named Grover ran the country. Think about that.

As Senators, it leaves us with a choice. Will we allow the people to continue deciding who will nominate the next Justice or will we empower a lameduck President to make that decision on his way out the door instead?

The question of who decides has been contemplated by many, including our friends on the other side of the aisle. We already know the incoming Democratic leader's view. The senior Senator from New York didn't even wait until the final year of President George W. Bush's term to declare that the Senate "should reverse the presumption of confirmation" and "not confirm a Supreme Court nominee except in extraordinary circumstances."

We also know how the current Democratic leader feels about judicial nominees from a President of the other party. This is what he said:

"The Senate is not a rubberstamp for the executive branch," he said. "Nowhere in [the Constitution] does it say the Senate has a duty to give presidential nominees a vote. It says appointments shall be made with the advice and consent of the Senate. That's very different than saying every nominee receives a vote."

What about the views of the top officer of this body, the President of the Senate? JOE BIDEN was a Senator for many decades. He was a loyal Democrat. He developed enduring friendships in both parties, and before becoming Vice President, he served here as chairman of the Judiciary Committee. Let's

consider what he said in circumstances similar to where we find ourselves today. It was an election year with campaigns already underway, a President and a Senate majority from different political parties, just as we have today. This is what appeared on page A25 of the Washington Post:

Sen. Joseph R. Biden Jr. (D-Del.), chairman of the Judiciary Committee, has urged President Bush not to fill any vacancy that might open up on the Supreme Court until after the November election. Warning that any election-year nominee "would become a victim" of a "power struggle" over control of the Supreme Court, Biden said he would also urge the Senate not to hold hearings on a nomination if Bush decided to name someone.

The article continued, quoting then-Senator BIDEN:

"If someone steps down, I would highly recommend the president not name someone, not send a name up," Biden said. "If he [Bush] did send someone up, I would ask the Senate to seriously consider not having a hearing on that nominee."

And then, this:

"Can you imagine dropping a nominee, after the three or four or five decisions that are about to [be] made by the Supreme Court, into that fight, into that cauldron in the middle of a presidential year?" Biden went on. "I believe there would be no bounds of propriety that would be honored by either side. . . . The environment within which such a hearing would be held would be so supercharged and so prone to be able to be distorted."

"Whomever the nominee was, good, bad or indifferent," he added, "would become a victim."

As the current chairman of the Judiciary Committee, Senator GRASSLEY, pointed out yesterday, BIDEN went even further on the Senate floor. He said that "[it does not] matter how good a person is nominated by the President" because it was the principle of the matter, not the person, that truly mattered.

BIDEN cautioned that "Some of our nation's most bitter and heated confirmation fights have come in presidential election years" but also reminded colleagues of several instances when Presidents exercised restraint and withheld from making a nomination until after the election.

One of them was Abraham Lincoln. It offers an example others may choose to consider.

President Obama, like Lincoln, once served in the Illinois legislature. It is a place he returned to just the other day to talk about healing the divide in our country. He said:

It's been noted often by pundits that the tone of our politics hasn't gotten better since I was inaugurated. In fact it's gotten worse. . . . One of my few regrets is my inability to reduce the polarization and meanness in our politics.

Well, this is his moment. He has every right to nominate someone, even if doing so will inevitably plunge our Nation into another bitter and unavoidable struggle. That certainly is his right. Even if he never expects that nominee to be actually confirmed but

rather to wield as an election cudgel, he certainly has the right to do that. But he also has the right to make a different choice. He could let the people decide and make this an actual legacy-building moment, rather than just another campaign road show.

Whatever he decides, his own Vice President and others remind us of an essential point. Presidents have a right to nominate just as the Senate has its constitutional right to provide or withhold consent. In this case, the Senate will withhold it. The Senate will appropriately revisit the matter after the American people finish making in November the decision they have already started making today.

For now, I would ask colleagues to consider once more the words of Vice President BIDEN. He said:

Some will criticize such a decision and say it was nothing more than an attempt to save the seat on the Court in the hopes that a . . . [member of my party] will be permitted to fill it, but that would not be our intention, Mr. President, if that were the course to choose in the Senate to not consider holding hearings until after the election. Instead, it would be our pragmatic conclusion that once the political season is underway, and it is, action on a Supreme Court nomination must be put off until after the election campaign is over.

That is Vice President BIDEN when he was chairman of the Judiciary Committee in a Presidential election year. Fair to the nominee, essential to the process, a pragmatic conclusion—the words of President Obama's own No. 2. What else needs to be said?

RECOGNITION OF THE MINORITY LEADER

The PRESIDING OFFICER. The Democratic leader is recognized.

WISHING WELL SENATOR CLAIRE MCCASKILL

Mr. REID. Mr. President, on behalf of the entire Senate, we acknowledge the prayer of the Chaplain today regarding CLAIRE MCCASKILL. CLAIRE MCCASKILL, as is known now, has breast cancer. She feels comfortable with the diagnosis. She is in a place where they are rendering great care in St. Louis, in the State of Missouri, so we are hopeful and very confident she is going to be just fine. But our thoughts are with her, recognizing the number of people in the Senate who have been stricken with cancer of one kind or another.

Without belaboring the point, breast cancer is personally very devastating not only to the patient, of course, but to the family who is doing everything they can in a compassionate way to support their loved one. We know Joe, her husband, is terribly concerned, but I sent a message to him that the treatment of breast cancer is so much better than it was just a few years ago and that we believe CLAIRE will be OK, and we certainly hope that is the case.

PRESCRIPTION DRUG ABUSE

Mr. REID. Mr. President, the Republican leader mentioned a number of things, and I am not going to talk about all of them, but there is one thing I want to focus on for just a minute. We have something that is devastating moving forward throughout this country, and that is poisoning by opioids. These products that come in the form of medicine prescribed by doctors have been devastating and sweeping the country.

Of course, I am glad we are moving forward on Dr. Califf—he is a fine man, and he will do a good job as head of the Food and Drug Administration—but we are going to move to some legislation dealing with these poisons. I would hope that everyone would appreciate the fact that what we are going to do, as we do too often, is celebrate the passing of legislation that really doesn't have much to do with reality. The only way we are going to do a better job of fighting this scourge is to have some resources to help people who have the responsibility to do something about that. We need to take up the Judiciary Committee's opioid bill, maybe even as early as next week, but we also need to devote real resources, not just lipservice, to this important problem.

FILLING THE SUPREME COURT VACANCY

Mr. REID. Mr. President, I know the Republican leader is doing his best to try to make a good picture here as to why he has made the decision that the Senate is not going to confirm any Supreme Court nominee the President puts forward. I heard one statement by the former chair of the Judiciary Committee this morning saying it doesn't matter whom he puts up, we are not going to vote for him or her, whatever the case may be. But the facts my friend provides are absolutely distracting and they are wrong. He can read all the statements he wants from the senior Senator from New York and the Vice President, but never were any nominees held up.

In fact, we don't have to go back to Grover, as he indicated, to find a similar situation. Let's talk about Ronald, a more recent President. In 1988, in the last year of his Presidency, President Reagan put forward the nomination of Anthony Kennedy to be a Supreme Court Justice. That was in the last year of his term. And what did we do? We took it up, and he was confirmed.

There is a lot of time to do things. Vice President BIDEN's statement was made in the middle of the summer of the year he spoke, but there is so much time left. We have 333 days left in President Obama's term of office, so there is plenty of time to get the work done. The average number of days to confirm Justices is 67 days, so I think we should be able to squeeze 67 days out of 333 days.

I don't want to burden everyone with facts, but sometimes they can get in the way of some of these ridiculous diversions from what our job should be. When Senator BIDEN was chairman of the Judiciary Committee in 1991 and 1992 during George W. Bush's term, we confirmed 120 judges. Certainly that hasn't been the case in the last few years because Republicans basically have opposed all judges. And now this new direction toward making sure there is no confirmation of a Supreme Court Justice is obstruction on steroids.

This is really a pivotal moment for the Republican Party and this Republican Senate. The Republican Party of Abraham Lincoln and Theodore Roosevelt is transforming before our eyes, abandoning its last vestiges of decency and rationality and unconditionally surrendering its moral compass to Donald Trump and TED CRUZ. Gone are the days of levelheadedness and compromise. The radicals in the Republican Party have turned "bipartisanship" into a dirty word. Behind closed doors, my Republican colleagues like to express disappointment at the direction the party is taking, but never, never will they say anything publicly because the extreme elements in their party who seem to be running the party will criticize them.

Republicans should think long and hard about this simple fact: If they follow the course set by the Republican leader, every one of them will be as responsible as Trump and CRUZ in the debasement of the Republican Party. He will join them in what they have done to the party. It will be a new and much worse Republican Party.

Clearly, Senator MCCONNELL is absolutely following the lead of extremists Trump and CRUZ. There is no clearer example of this than the Republican leader's response to the Supreme Court vacancy. In the aftermath of Justice Scalia's passing, the senior Senator from Kentucky could have announced his intent to fulfill the Senate's constitutional responsibility and invited the President to send a well-qualified candidate to the Senate for confirmation. But that is not what he did because that is not the party of Trump. Instead, the Republican leader announced that he will deny President Obama his constitutional right to appoint nominees to the Supreme Court, defying all precedent that has been set, and by so doing, he will leave the Supreme Court in a state of uncertainty.

Senator MCCONNELL is leading a charge to obstruct and cheapen the Presidency at all costs, regardless of the damage it does to our democracy. Doesn't that sound familiar? Sounds like something Donald Trump would do. That is because it is exactly what Donald Trump urged Senator MCCONNELL to do. At a Republican Presidential debate in South Carolina 10 days ago, Mr. Trump said of the Supreme Court vacancy:

I think it's up to Mitch McConnell and everybody else to stop [the nomination]. It's called delay, delay, delay.

That is from Donald Trump, and that is exactly what the Republican leader is doing—delay, delay, delay.

I believe 333 days is enough to do the work we ordinarily do in 67 days.

It is disappointing that the Senator from Kentucky takes his marching orders from extremists such as Donald Trump. It is a pretty stark change from what Senator MCCONNELL used to believe. He used to loathe this radical tea party faction of the Republican Party. According to an account in the New York Times, the Republican leader once referred to the tea party Republicans as "those idiots, those people come up here and have never been in office and know nothing about being in office." Yet, today, he is meeting with those same Republicans. He is meeting with the House Freedom Caucus—the same Republicans who worked with TED CRUZ to shut down the government. And they did shut it down. It seems as though the Republican leader now subscribes to this new, radical Republicanism.

Even though this extremist brand of politics may sell in Republican Presidential primaries, mainstream Americans categorically reject it. Yesterday, Public Policy Polling released a survey of Independent voters in Pennsylvania and Ohio—not Democrats, not Republicans, but a large swath of Americans who are now Independents. These numbers should serve as a wake-up call to the Republican leader's party: 70 percent of Independent voters in Ohio believe a new Supreme Court Justice should be named this year. More than 60 percent of Independent voters in Pennsylvania believe a new Supreme Court Justice should be named this year.

The American people are telling Republicans in the Senate that they reject this obstruction of a Supreme Court nominee. Unfortunately, the Republican leader is listening to Donald Trump and the junior Senator from Texas. He is not listening to mainstream America. He is not listening to the few voices of reason coming from his own party, even from his own Senators.

Yesterday the senior Senator from Maine, a Republican, told CNN:

For my part, it's clear the President can send up a nominee—regardless of where he is before he leaves office. It is the duty of the Senate, under the Constitution, to give our advice and consent or withhold our consent. I believe we should follow the regular order and give careful consideration to any nominee that the President may send to the Senate.

There is precedent in this body. Even in the Judiciary Committee, if there is a hearing held and the person is not reported out with a majority vote, it comes to the floor anyway. Senator LEAHY—longtime chair of the Judiciary Committee, the President pro tempore of the Senate, and now ranking member of the Judiciary Committee—